

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE.

The meeting was called to order by Chairperson Senator Susan Wagle at 1:30 p.m. on March 25, 2003 in Room 231-N of the Capitol.

All members were present except: Senator Nancey Harrington

Committee staff present: Mr. Norm Furse, Revisor of Statutes
Ms. Margaret Cianciarulo, Administrative

Conferees appearing before the committee: Ms. Sylvia Raeff, National Organization for Women,
Lawrence Chapter
Ms. Willow Eby, R.N. reading testimony for the
Center for Reproductive Rights
Mr. Mark Peterson, Manager, Clinic Manager for
S. Zaremski, MD
Representative Peggy Long
Ms. Kathy Ostrowski, State Legislative Director,
Kansans for Life
Ms. Jeanne Gawdun, reading testimony for
Ms. Denise M. Burke, Esq., Americans United for Life
Mr. Mike Farmer, Executive Director,
Kansas Catholic Conference

Others attending: See attached guest list

Continued Hearing on HB 2176 - an act concerning abortion clinics; providing for regulations licensing and standards for the operation thereof; providing penalties for violations and authorizing injunction actions

Upon calling the meeting to order, the Chair announced she would continue the hearing on the above bill and would be calling on the last three opponents listed on yesterday's hearing agenda that were unable to testify due to lack of time.

The Chair then recognized Ms. Sylvia Rueff for the Kansas National Organization for Women, the Lawrence Chapter, who stated that their organization believes Targeted Regulation of Abortion Provider (TRAP) bills, such as this one, are discriminatory, there are no other regulations in Kansas statute that cover medical service for any other surgical procedures for people or animals, and to single out regulation by statute providers of abortion procedures, which are uniquely for women, is discriminatory. A copy of her testimony is (Attachment 1) attached hereto and incorporated into the Minutes as referenced.

Ms. Willow Eby, R.N. was the next opponent conferee. Ms. Eby read testimony for the Center for Reproductive Rights that listed their reasons why they oppose the bill (ex. An unnecessary measure, will not serve women's health, violates constitutional rights and informational privacy rights, and costly to the State). A copy of her testimony is (Attachment 2) attached hereto and incorporated into the Minutes as referenced.

The final opponent to testify was Mr. Mark Peterson, Clinic Manager for S. Zareznski, M.D out of Kansas City, Kansas, who stated that, in 31 years from 1971 to 2001, there has been 314,000 abortions and one documented anesthesia-and-food choking-related death with an abortion in Kansas and this bill would not have prevented this death. A copy of his testimony is (Attachment 3) attached hereto and incorporated into the Minutes as referenced.

The Chair then recognized the first proponent, Representative Peggy Long, who cited incidences, told

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first hand, about two seventeen year olds who died after suffering from a perforated uterus and questions opponents who stated that it would cost too much money to have someone in the room when a woman is examined, yet she knows of no other physician's office where this is not common practice. A copy of her testimony is (Attachment 4) attached hereto and incorporated into the Minutes as referenced.

The second proponent was Dr. Laura Kenny, who stated that abortion services for the most part, remain out of the medical mainstream and as such are not subjected to the same scrutiny as virtually all other surgical procedures. She also stated that the standards set forth in this bill are the same standards set forth by Planned Parenthood, the National Abortion Federation, and the American College of Obstetricians and Gynecologists. A copy of her testimony is (Attachment 5) attached hereto and incorporated into the Minutes as referenced.

Next was Ms. Kathy Ostrowski, State Legislative Director for Kansas for Life, who offered a list of Kansas licensed practitioners to support the bill, malpractice filings against abortionist Robert Crist, an information bulleting from Kansas for Life showing how Planned Parenthood failed inspections in Kansas and Missouri. A copy of booklet she provided is filed in Senator Wagle's office.

The fourth proponent was from Ms. Jeanne Gowdun who read testimony for Americans United for Life from Ms. Denise Burke, staff counsel. Ms. Burke offered specific testimony on:

- 1) the constitutionality of abortion clinic regulations and the status of current litigation;
- 2) the prevalence of abortion clinic regulations in other states;
- 3) the national abortion care standards and protocols that form the basis of **HB 2176** an other similar laws; and
- 4) evidence of substandard care that generally supports the need for abortion clinic regulations.

Finally, she stated, she would attempt to answer common objections to or misunderstandings of laws regulating abortion clinics and suggest amendments to subsection (o) to cure potential constitutional infirmities. A copy of her testimony is found in the booklet provided by Ms. Ostrowski and again, filed in Chairperson Wagle's office.

The last proponent called to testify before the Committee was Mr. Mike Farmer, Executive Director of the Kansas Catholic Conference, who stated that the bill enables legislation that directs the Secretary of KDHE to adopt rules and regs for an abortion clinic's facilities and when drafting this bill last year, the regulations that were used came directly from clinic regulations used by the abortion industry itself that were modeled after standards and protocols developed by the National Abortion Federation, the Planned Parenthood Federation of America, and Planned Parenthood of Central and Northern Arizona. A copy of his testimony is (Attachment 6) attached hereto and incorporated into the Minutes as referenced.

As there were no neutral testimony, written testimony was offered from Ms. Judy Smith, State Director of Concerned Women of America, and from Senator Nick Jordan with an attachment. A copy of both are (Attachment 7) attached hereto and incorporated into the Minutes as referenced.

The Chair then asked for questions or comments from the Committee. Questions and a comment came from Senators Barnett, Haley, Wagle, and Brownlee for Dr. Kenney ranging from why does the first trimester abortions need to be regulated, how many deaths in Kansas clinics over the last decade because of the procedure (answered by Ms. Ostrowski), how many abortions have been performed in Kansas in the last 15 years, do we increase the cost of making one free of a crises pregnancy, if there are complications or a death that occurred from an abortion is that registered or listed as something as a different medical malady rather as a result of an abortion, to the difficulty in trying to determine all of the morbidity and mortality related to abortions.

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Action on the above bill HB2176

The Chair closed the hearing and asked that the Committee work the bill. She then asked Mr. Furse to distribute a balloon indicating several new amendment to the bill and asked Senator Barnett to explain them. A copy of the balloon is (Attachment 8) attached hereto and incorporated into the Minutes as referenced.

An overview of Senator Barnett's explanation of the amendments is as follows:

1) In regards to language on page 1, beginning on line 25, the issue was raised that the legislation is not distinguishing between medical and surgical abortions, so some suggested language would be as written in which "surgical abortions or where a surgical procedure for an abortion is the standard protocol for a failed medical abortion." and striking the language of "five or more first trimester abortions, etc."

A discussion ensued between Senators Wagle, Brungardt, and Steineger as to the usage of the language of "five or more used", the concern being, in Kansas the question is why would you treat an abortion facility different than a physicians office and the answer being that we are dealing with surgical procedures and typically a facility that offers surgical procedures is regulated by KDHE. The statement was made that there plenty of facilities where surgical procedures take place that are not regulated as a clinic, they are regulated by practice acts and whether the licensed is a practitioners.

2) Beginning on page 2, line 43 and the top of page 3 line 1, they are addressing the issue that was heard in testimony regarding the issue of someone being present in the examining room. This language would be struck and new language would read to include another individual be present in the room during a pelvic exam or during the procedure if the physician is a male, then the other individual will be female.

3) Dropping down to line 26 on page 3, testimony was heard from Dr. Hodes regarding whether a test should be performed for anemia and Senator Barnett, speaking as a doctor himself, indicated he could think of instances where it would not be necessary, so they would be inserting "as indicated" to give the physician that judgement.

4) On page 4, beginning on line 31, Senator Barnett also felt there were inconsistencies about admitting privileges found earlier in the bill (still in section 1) and yet it is still important that someone be there when the patient is in recovery or before discharge, so the new language would read to include a "nurse shall remain" on the premises as well as the physician until all patients are "discharged" and the physician "or nurse" shall be readily accessible and available until the last patient is discharged.

Senators Brownlee asked regarding the word "nurse " as used here, is it defined in a certain way? Senator Barnett suggested taking from the Planned Parenthood's language in the green sheet, top of line 3 of the booklet Ms. Ostrowski provided. The Chair asked Mr. Furse if they needed to define this. Mr. Furse said that this could be placed in the definition section, keeping in mind that for the most part, these subsections are directions to the Secretary to adopt rules and regs. Dr. Kenney felt the intent was to have someone there that could resuscitate the patient should something occurred. Ms. Ostrowski stated that there are lawsuits pending regarding a traveling physician and patients being left in the care of someone not qualified. Mr. Peter Brownlie stated that nurses who are trained appropriately can handle the situation, because it is not essential for a physician to be on site in the recovery room at all times. Senator Barnett agreed and offered often, in other ambulatory care centers, if the physician is gone, they will by phone, authorize admission and the nurse may call the order in. He stated, he was just trying to be consistent with what others practiced in the State.

5) there were two items raised yesterday, the first on page 6, where one of the Senators raised the issue of

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criminal fines and wondered about the consistency of this compared to other hospitals and surgery centers, so language developed to make this consistent with licensure revocation and not criminal penalty and at the top of page 7, the misdemeanor B is stricken and is replaced with the information on page 6 of the balloon. Senator Barnett stated that Mr. Furse has reviewed current statutes for other facilities and felt this would fit nicely. Mr. Furse stated that this was a modification the hospital statutes.

The Chair recognized Senator Jordan who asked, "if the license is revoked, what happens, do they continue to operate unlicensed?" Mr. Furse stated that the language of the bill requires that each clinic would be required annually to obtain a license and again, language could be added to specifically say they could not operate without a license. He felt that the implication was here. Senator Jordan asked what happens to facilities, such as hospitals, when they loose their license? Mr. Furse said that they cannot operate. Senator Jordan then said that if the legislature is going to be consistent, he would suggest to add some kind of language to state that these types of clinics also could not operate if their license had been revoked. The Chair did say that the new language on page 6 takes this into account.

The Chair then asked Mr. Furse that in order to enforce this, would there also be a need to add that the facility could no longer operate if their license has been revoked? Mr. Furse said it would not hurt, even though the implication was there, stating that they are required annually to obtain a license, but the language does not say that no abortion clinics may operate unless it has a license.

The Chair asked the Committee if there would be objection to first dealing with the criminal penalty (pages 6 and 7) after Senator Barnett explained the second issue, to explain to those here, regarding how practice technology and imaging changes, so language was suggested that the Secretary periodically share review and update current practice technology standards under this Act and based on current practice or technology, adopt, by rules and regulation, alternative practice or technology standards found by the Secretary to be as effective as those enumerated in this act. And again, trying to allow for change and not have an obsolete bill in a year or two.

The Chair then asked Mr. Furse where he felt the language of revoking the license should be? Mr. Furse replied that, based on the policy idea, the Committee needed to insert in front of the word "each", in line 29, that no abortion clinic shall operate in the State unless it has a currently effective license.

Action on HB 2176 - an act concerning abortion clinics

Senator Brownlee made a motion to:

- 1) adopt the balloon on page 6 and include the additional language that upon the revocation of a license, that the facility would be closed,
- 2) strike the misdemeanor on page 7, and
- 3) and inserting new language on page 6 line 29, that no abortion clinic shall operate in the State unless it has a currently effective license.

Senator Harrington seconded the motion and the motion carried.

Senator Haley asked what the violation was and the Chair answered if there was a substantial failure to comply, they could loose their license to operate rather than a misdemeanor.

The Chair then asked the Committee to return to page 1 of the bill and deal with the first amendment

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only.

Senator Brownlee made a motion to adopt the amendment on page 1, striking the section “five or more first trimester abortions”.

Senator Haley asked for discussion. The Chair said she believed it had gone through the courts, and felt she and Senator Barnett were concerned that to justify the need for this bill the Committee might apply it to surgical abortions or to facilities where medical abortions were performed and it is required when a medical abortion fails that a surgical abortion takes place. She mentioned that in the Planned Parenthood guidelines, the National Abortion Federation provided what their standards are for a medical abortion stating:

“A medical abortion is irreversible once the mifepristone or methorexate has been taken. Deciding to continue a pregnancy to term is not an option at any point after taking the first medication. The embryo is not expelled after using these medications, a suction procedure, which is a surgical abortion, must be done to empty the uterus and complete the abortion”.

The Chair stated, that even in a clinic where they are only doing medical abortions, they have to be able to do a surgical abortion immediately if the medical abortion is not complete. To clarify, Senator Harrington asked if this language would include medical abortion? Mr. Brownlee stated that medical abortion requirements certainly are FDA requirements and standard requirements are that a surgical abortion be available in a backup instance, but does not have to be performed in the same physical facility in which the medical abortion was provided. The primary rationale for the development of a medical abortion is for that service to be provided in non-surgical facilities.

The Chair asked how soon after a medical abortion do you have to have the suction take place? Mr. Brownlee stated it varies depending upon when it is discovered, that if fact that the medical abortion was not successful. The FDA requirements are that there be a surgical facility within 15 miles of the cite from where the medical abortion is provided. The Chair asked if the FDA also limits the number of weeks which you can perform a medical abortion to seven weeks? Mr. Brownlee stated that this standard is changing right now and does not know if it is moving to 9 weeks as a result of research and experience. She asked if he would object if the Committee limited this to seven weeks for a medical abortion? Mr; Brownlie said he would because, at this point, the standard is moving to 9 weeks, but if the Committee would be willing to again convene and amend this law as the standards change, he would agree to this.

Senator Barnett asked Mr. Brownlee to check the language which would require that the standard protocol for a medical abortion was a surgical procedure and that this is what would be impacted by this wording. Mr. Brownlee felt the wording “standard protocol” was vague and did not indicate the actual facility and the physical location where an abortion is provided, as long as it is clear that it is where the surgical procedure is in fact provided. Senator Barnett indicated that was his intent as well. Senator Barnett asked Mr. Furse if he had any suggestions? Mr. Furse felt they were looking at language that says that surgical abortions are performed or where a surgical procedure for an abortion would take place and the physical facility is the standard protocol. If the protocol is to go to a different location or go to a hospital then this definition would not pick this up, but if the protocol is to do the surgical procedure in the facility also, then this would pick this up.

Senator Brownlee then withdrew her first motion and moved to adopt the language stating where surgical abortions are performed or where a surgical procedure for an abortion is to take place in the facility is the standard protocol for a failed medical abortion. Mr. Furse said this would clarify that it is in the abortion clinic location that the surgery would take place, if it is not, then it would be excluded from the definition of abortion clinic. Senator Haley said his understanding that what Senator Barnett was bringing us, was to

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define surgical versus medical abortions and we would not want to have the same regulation apply for surgical as we do medical. He stated this was his reason for making a motion so that we get medical procedures outside the realm of **HB2176**. Senator Steineger seconded, there were four who did not favor, so the motion did not pass.

The Chair recognized Senator Brownlee who suggested that the abortion clinic mean a facility other than an accredited hospital and where surgical abortions are performed. The Chair stated she was thinking that the way this was written, it would also regulate a clinic that did medical and surgical abortions, because a medical abortion, as stated before, if not successful, the patient must have a surgical abortion. Senator Brownlee stated in that case, they would fall under this act and the surgical abortion would have to be done in a licensed clinic. The Chair stated that they are already covering second and third trimester abortion which believed there were no issues, and are they all surgical are they not? Senator Barnett said yes and he would support Senator Brownlee's conceptual amendment.

The Chair then asked Senator Brownlee restate the motion. Senator Brownlee made a motion to adopt the amendment that reads as "the abortion clinic means a facility other than an accredited hospital and where surgical abortions are performed. Senator Barnett seconded the motion and the motion carried

The Chair then asked the Committee to turn to page 3, dealing with the language of the female in the room if this physician is a male and the test for anemia as indicated. Senator Wagle made a motion to adopt both amendments (line 1 and line 26) as presented by Senator Barnett. Senator Brownlee seconded the motion and the motion carried.

The Chair asked the Committee to move on to page 4. She said she thought Senator Barnett was trying to attain something similar to the current practice. Senator Brownlee made motion to adopt these but would like to add to this motion that "nurse" be conceptually appropriately defined or described in this amendment. A discussion ensued with Senators Brownlee, Haley, Barnett, and Wagle and Dr. Kenny regarding what type of nurse would be able to assist after the physician has left, what was the intent, is the standard to high or to low, ACLS certification, and addresses the issue of CPR.

The Chair again asked Senator Brownlee to restate her motion. Senator Brownlee made a motion to adopt the balloon on page 4 with the conceptual addition that the nurse be an RN and ACLS trained. However, Senator Barnett stated there could be ARNPs, PA's, but felt that the ACLS certified would be what we would want to adopt and leave the definition out of this. The Chair then asked if Senator Brownlee would amend the conceptual motion to allow a nurse who is ACLS trained.

Senator Brownlee made a motion to adopt the balloon on page 4 with the conceptual addition that the nurse be ACLS trained. Senator Harrington seconded the motion and the motion carried.

The Chair then asked the Committee if there were any more amendments requested on this bill? As there was none. Senator Harrington made a motion to move the amendment out favorably. Senator Brownlee seconded the motion The Chair asked for comments. Senator Haley commented that the Committee had not yet gotten to the point of understanding what this bill does, stating he felt the Committee did not know where the stats are, whether or not we are raising the costs, and would like to make a motion to make an interim study to look at the cost of this. The Chair stated a substitute motion for interim studies has been requested, seconded by Senator Brungardt, as there were more "no's" than "I's" and the motion was defeated. The Chair said the Committee was now back on the original motion and asked if the bill be passed out favorably as amended? The Chair stated it appears that the "I's" have it. Senator Haley asked for a division. The Chair then stated a request has been made for a division and asked the Committee to raise their hands if they were for the bill and passing it out amended as favorably. The Chair counted six as in favor and three as opposed. The Chair stated the motion passed and that Senator Haley is recorded as a no, and asked if others want to be recorded. As there was none, the Chair thanked the Committee.

Adjournment

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As it was after 2:30 p.m., the Chair adjourned the meeting. Adjournment was at 2:35 p.m. The next meeting is on call of the Chair